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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,792	06/06/2005	David Snyder	US020502 US	6511

28159 7590 12/10/2008

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EXAMINER

LAVERT, NICOLE F

ART UNIT	PAPER NUMBER
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3762

MAIL DATE	DELIVERY MODE
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12/10/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/537,792	Applicant(s) SNYDER, DAVID	
	Examiner NICOLE F. LAVERT	Art Unit 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-29 & 46-57 is/are pending in the application.
- 4a) Of the above claim(s) 46-57 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 August 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/6/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Newly submitted claims 46-57, group II and III respectfully, are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Claims 25-29 versus 46-53 are related as combination and subcombination. In regards to claims 25-29 (Group I) versus claims 46-53 (Group II), the inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination (Group I) as claimed does not require the particulars of the subcombination (Group II) as claimed because the combination does not require the use of an Automatic External Defibrillator (AED) in order to deliver a defibrillation shock but may rather utilize an implantable defibrillator in order to deliver a defibrillation shock. Therefore the combination has the capability of utilizing an implantable defibrillator for delivering a defibrillation shock rather than use an AED for delivering a defibrillation shock as is claimed by the subcombination. The subcombination has separate utility such as a method determining the need of a defibrillation shock based on the cessation of precordial compressions in which said method can be performed by utilizing an implantable defibrillator versus an AED as is instantly claimed.

Claims 25-29 versus 54-57 are related as combination and subcombination. In regards to claims 25-29 (Group I) versus claims 46-53 (Group III), the inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by

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itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination (Group III) as claimed does not require the particulars of the subcombination (Group I) as claimed because the combination does not require the use of a method analyzing an ECG signal for signal corruption, but rather utilizes a method of monitoring and analyzing obtained ECG signals for cessation of precordial compressions. The subcombination has separate utility such as a method of analyzing an ECG signal based, in which the method can analyze said ECG signals by detecting cessation of precordial compression administration.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 46-57 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 26-28** are rejected under 35 U.S.C. 102(b) as being anticipated by Cole et al. (US 5,611,815).

In regards to claims 26-29, Cole et al. discloses, a method for delivering a defibrillation shock using a defibrillator, the method comprising the steps of [e.g., (col 1, ln 61-67)-(col 2, ln 1-4)]: (a) having the defibrillator initiate a cardio-pulmonary resuscitation CPR interval (e.g., col 5, ln 58-63); (b) prior to an end of the cardio-pulmonary resuscitation (CPR) interval, analyzing

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the ECG signal for signal corruption and, if a cessation or absence of CPR precordial compressions is indicated by substantially no signal corruption; analyzing an ECG signal prior to the end of the originally initiated cardio-pulmonary resuscitation (CPR) interval to determine if a defibrillation shock is needed [e.g., (col 6, ln 58-67)-(col 6, ln 1-13) & (Fig 3, 288)] (d) delivering a defibrillation shock if the analyzing step (c) indicates that a defibrillation shock is needed (e.g., col 3, ln 1-16). Applicant should note that the recitation “for signal corruption and, if a cessation or absence of CPR precordial compressions is indicated by substantially no signal corruption” is an intended use recitation and as such, has not been given any patentable weight. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In this case the method of utilizing a defibrillator of Cole et al. is capable of performing the intended use.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claim 29** is rejected under 35 U.S.C. 103(a) as being unpatentable over Cole et al. (US 5,611,815) in view of Elghazzawi et al. (US 2004/0162585).

Cole et al. discloses the claimed invention having a method for delivering a defibrillation shock using a defibrillator except for a method for delivering a defibrillation shock, wherein said

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defibrillation shock is provided about 10 seconds or less after the cessation of precordial compressions. Elghazzawi et al. teaches that it is known to utilize a method of delivering a shockable rhythm X seconds after CPR compressions, in which it is well known to one in the art to provide a defibrillation shock at a specified time, such as 10 seconds, after a CPR interval, as is instantly claimed (e.g., [0024]-[0025]). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of delivering a defibrillation shock using a defibrillator as taught by Cole et al. with the method of delivering a shockable rhythm X seconds after CPR compressions as taught by Elghazzawi et al., since such modification would provide the method of delivering a defibrillation shock using a defibrillator, wherein the shockable rhythm is delivered 10 seconds after CPR compressions for providing predictable results pertaining to eliminating premature cessation of needed CPR and/or avoiding undesirable delays in treatment of re-fibrillation when it occurs [e.g., Elghazzawi, 0024].

Response to Arguments

6. Applicant's arguments with respect to claims 26-29 & 46-57 have been considered but are moot in view of the new ground(s) of rejection as necessitated by amendments.

7. Applicant's arguments, filed 20 August 2008, with respect to the drawings and specifications have been fully considered and are persuasive. Therefore the objections of the drawings and specification have been withdrawn.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NICOLE F. LAVERT whose telephone number is (571)270-5040. The examiner can normally be reached on M-F 7:30-5:00p.m. (Alt. Fridays).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 571-272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George R Evanisko/
Primary Examiner, Art Unit 3762

/Nicole F. LaVert/
Examiner, Art Unit 3762